

# Office of the State Public Defender

## Administrative Policies

Subject: <b>Client File Retention</b>	Policy No.: <b>107</b>
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### 1.0 POLICY

- 1.1 All Office of the State Public Defender (OPD) client files are the property of the State of Montana and disposition of files must follow the rules established by the Montana Secretary of State.
- 1.2 Every client is entitled to one copy of their case file. Clients will be notified of this right and the scheduled date of file destruction in the case closing letter. Requested files will be delivered in electronic format unless the client requests a paper copy. There will be no charge to the client for providing the case file in either format.
- 1.3 OPD has established the following procedures for disposition of client files. This policy applies to all client files, whether maintained by OPD offices or by contract attorneys.
- 1.4 This retention schedule applies to investigative files that are maintained separately from the case file.
- 1.5 This retention schedule applies to mental health consultation files that are maintained separately from the case file.

### 2.0 PROCEDURE, OPD OFFICES

- 2.1 All client files will be retained by calendar year for the appropriate retention period by case type and disposition as described below.
- 2.2 Destruction will occur in January or February for all client files that fulfilled the retention period as of December of the prior year. The Central Office will notify all offices when the destruction request for that year has been approved by the Secretary of State.
- 2.3 Paper files will be shredded. Duplicate electronic files will be deleted.
- 2.4 Incoming FTE attorneys may not bring or store their private practice files in OPD offices, unless the case becomes an OPD case when they are hired.
- 2.5 Any hard copy files that are forwarded to the appellate office will be returned to the originating office when the appellate office has copied/scanned them for the appeal. Those files are subject to the retention period based on the disposition of the original case.
- 2.6 The Major Crime Unit (MCU) is the record holder in any case in which a regional employee is co-counsel. Co-counsel are responsible for providing attorney notes

or any other information that is not duplicated in the MCU file to the MCU. Any duplicative materials may be destroyed in the regional office.

### **3.0 PROCEDURE, CONTRACTOR OFFICES**

All contractor files, whether conflict or non-conflict, are the responsibility of the contractor.

**3.1** OPD should not accept or retain any contractor files in their offices.

**3.2** Contractors agree to abide by OPD's retention schedule when they sign the Memorandum of Understanding (MOU).

**3.3** Regional offices should prepare a list of contractor files at the end of each calendar year listing the files that the contractor holds that may be eligible for destruction at calendar year end. It is then up to the contractor to destroy or retain as appropriate.

**3.4** The appellate office is excepted from this policy and may retain their contractor files due to the cost of reproducing transcripts or other documents that may not be accessible for the entire 10-year retention period if left with a contractor.

### **4.0 CRIMINAL CASES**

#### **4.1 FELONY CASE FILES**

##### **4.1.1 DEFERRED**

##### **4.1.1.1 DEFERRED SENTENCE**

Destroy two years following the end of the deferral period, or a maximum of eight years after judgment.

##### **4.1.1.2 DEFERRED PROSECUTION AND/OR IMPOSITION**

Destroy three years following dismissal.

##### **4.1.2 SUSPENDED SENTENCES**

Destroy after completion of the sentence including any suspended portion. If the sentence is for a period of commitment followed by a suspended sentence, the file will be destroyed after completion of the suspended portion of the sentence.

##### **4.1.3 COMMITMENT SENTENCES**

**4.1.3.1** If the sentence is one of commitment to the Department of Corrections or the Montana State Prison *with no suspended portion*, destroy five years after the entry of judgment, or upon completion of sentence if earlier.

**4.1.3.2** If the sentence is one of commitment to the Department of Public Health and Human Services, destroy five years after the entire commitment is discharged, including any community placement.

**4.1.4** Individual offices will retain the file for a period exceeding the retention schedule, within their discretion and with documented management approval, when:

**4.1.4.1** The file is that of a client whom the office believes will be a client again; or

**4.1.4.3** The file is that of a client whom the office believes may benefit from keeping the file for a longer period of time due to the nature of the offense or the disposition of the case.

## 4.2 MISDEMEANOR CASE FILES

### 4.3 JUVENILE CASE FILES

#### 4.4 EXTRADITION CASE FILES

## 5.0 POST-JUDGMENT

## 5.1 APPELLATE CASES

## 5.2 POSTCONVICTION RELIEF

### 5.3 SENTENCE REVIEW

#### 5.4 PETITIONS FOR RELIEF OF DUTY TO REGISTER AS A VIOLENT OR SEX OFFENDER

## 6.0 CIVIL CASES

## 6.1 DEPENDENT/NEGLECT CASE FILES

**6.1.1** The case has been closed for five years; or

**6.1.2** The concerned children have reached the age of 18; or

## 6.2 INVOLUNTARY COMMITMENT OR GUARDIANSHIP CASE FILES

## 7.0 OTHER

## 7.1 INDIGENCY DETERMINATION AND APPOINTMENT FILES

## 7.2 RESCINDED APPOINTMENT

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**7.3**     **SUBSTITUTION OF COUNSEL**  
Destroy three years following the substitution.

**7.4**     **DISMISSED CASE FILES**  
Destroy three years following dismissal.

**7.5**     **ACQUITTED CASE FILES**  
Destroy one year after judgment.

**8.0**     **DECEASED CLIENTS**

**8.1**     If a client dies prior to sentencing, the file will be destroyed three years after the case is closed.

**8.2**     If a client dies after sentencing, the retention period is equal to the defined retention period based on case type and disposition.

**9.0**     **CLOSING**

Questions about this policy should be directed to:

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